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RICHARD A. MARSHACK

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

In re
NORTHERN HOLDING, LLC,

Debtor.

Case No. 8:20-bk-13014-MW

Chapter 7

NOTICE OF TRUSTEE’S MOTION FOR
ORDER APPROVING OVERBID
PROCEDURES FOR THE SALE OF
PROPERTY

[LBR 6004-1(b)]

Hearing (DATE SPECIALLY RESERVED):

Date: October 18, 2021

Time: 2:00 p.m.

Ctrm: 6C

Location: United States Bankruptcy Court
411 West Fourth Street
Santa Ana, CA 92701-4593

TO THE HONORABLE MARK S. WALLACE, UNITED STATES BANKRUPTCY JUDGE, THE
OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED PARTIES, ALL
CREDITORS, AND/OR THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 18, 2021, at 2:00 p.m., before the Honorable Mark
S. Wallace, a hearing will be held pursuant to LBR 6004-1(b) on the motion (“Motion”) of Richard
A. Marshack, the duly appointed and acting chapter 7 trustee (“Trustee”) for the bankruptcy estate
(“Estate”) of Northern Holding, LLC (“Debtor”), for entry of an order authorizing the
implementation of certain overbid procedures in connection with the Trustee’s proposed sale of real

1 property commonly known as 2380 Live Oak Road, Paso Robles, CA (“Live Oak Property”).

2 Trustee is in the process of marketing and selling the Live Oak Property with the Riboli
3 family (owners of the venerable San Antonio Winery) serving as the stalking-horse bidder. On
4 September 28, 2021, an Agreement of Purchase and Sale and Escrow Instructions (“PSA or
5 Agreement”) was signed by Trustee and Riboli Paso Robles, LLC (“Buyer”) which included, among
6 other things, a requirement for Trustee to file a motion to seek approval of certain bid procedures in
7 order for Buyer to proceed as the stalking horse bidder. The proposed bid procedures set forth below
8 are reasonable and will not unduly chill bidding. Moreover, Trustee is informed that if Buyer is
9 confirmed as the stalking-horse bidder, the value of the Live Oak Property will be maximized and
10 interest in the Live Oak Property will be greatly increased in the relevant community.

11 **A. Proposed Auction and Overbid Procedures**

12 Pursuant to the terms of the Agreement, the Trustee is required to file this instant Motion
13 setting forth the bid procedures at the auction of the Property. The proposed bidding procedures are
14 set forth in ¶ 6.4.2 of the PSA, which is reproduced in full below:

15 (a) If there are no overbids, Seller will recommend and request the
16 approval of the sale to Buyer upon the terms and conditions contained in this
17 Agreement.

18 (b) In order to overbid, any prospective bidder shall be required to
19 establish to the satisfaction of Seller its financial ability to successfully consummate
20 the transaction. This shall include as conditions of eligibility to bid a non-refundable
21 deposit equal to three (3%) of the Buyer’s purchase offer, evidence of availability of
22 cash to close, and the execution of a form of Purchase Agreement substantially the
23 same as this Agreement. The only changes to it should be the bid price, the identity
24 of the bidder and provision made for compliance with these Bidding Procedures.

25 (c) If the Court conducts an auction of the Property, the initial minimum
26 overbid shall FIFTY THOUSAND DOLLARS (\$50,000.00) higher than Buyer’s
27 agreed Purchase Price plus the Breakup Fee, defined below, and thereafter will go up
28 in TWENTY-FIVE THOUSAND DOLLAR (\$25,000.00) increments.

(d) If Buyer is not the successful bidder at the auction due to an overbid
29 (“**Overbid**”), Buyer shall be entitled to receive the amount of its Due Diligence costs
30 (not to exceed ONE HUNDRED SEVENTY FIVE THOUSAND DOLLARS
31 (\$175,000.00) plus a break-up fee of TWO HUNDRED TWENTY FIVE
32 THOUSAND DOLLARS (\$225,000.00) (collectively “Breakup Fee”).

(e) The Buyer’s right to a Breakup Fee is contingent on: (i) Buyer being
33 a ready, willing and able buyer for the Property at the time the Bankruptcy Court

conducts the last hearing on the sale of the Property; (ii) Buyer has completed Buyer's Due Diligence, waived in writing all contingencies and confirmed in writing that all approval periods have expired; and (iii) Buyer is overbid and the successful bidder in fact purchases the Property for the sum it bids at the hearing

(f) Buyer shall provide its Due Diligence costs, with backup documentation, to Trustee within five (5) days after the expiration of the Due Diligence Period. The Breakup Fee shall be paid within seven (7) business days of the close of the Property with the successful bidder

(g) If there is an overbid of at least NINE MILLION FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$9,550,000.00) and Buyer is the successful bidder, Buyer shall be entitled to a credit to the overbid purchase price in the amount of the Breakup Fee. If Buyer is not the successful bidder, Buyer agrees that its last bid shall serve as a back-up bid. The Deposit, less the Independent Consideration shall be returned to Buyer within seven (7) business days of the close of the Property with the successful bidder.

In summary, the bid procedures are as follows:

- Buyer to deposit \$273,000 with the Trustee within 3 business days of the mutual execution of the PSA. Deposit has been received by Trustee as of September 30, 2021.
- Any overbidder must provide a nonrefundable deposit of 3% of \$9,100,000, which is a deposit of \$273,000 (same as Buyer), provide terms substantially similar to the PSA, and provide evidence of ability to close.
- Minimum overbid to be \$9,550,000,¹ and minimum increments for bidding shall be in \$25,000 increments.
- If it is not the successful bidder at auction, Buyer is entitled to a break-up fee of \$225,000, which is 2.47% of the initial bid price of \$9,100,000. Buyer will also be entitled to recover its due diligence costs not to exceed \$175,000. The \$175,000 reimbursement plus the \$225,000 break-up fee are collectively referred to as the Break Up Fee.

¹ The due diligence costs are not anticipated to exceed \$175,000. The successful bidder, if not Buyer, will be entitled to a credit in an amount equal to the difference between Buyer's actual due diligence costs and \$175,000. For example, if the due diligence costs are \$125,000, and Buyer is not the successful bidder, the winning bidder will be entitled to receive a \$50,000 credit against the purchase price.

- Buyer may only be entitled to the Break Up Fee if it waives all contingencies, has completed its due diligence, and is a ready, willing, and able buyer on the sale hearing date.
- If there is an overbid of at least \$9,550,000, Buyer may use the Break Up Fee as a cash credit against its bid, provided that it is the successful/highest bidder.
- Buyer agrees that its last bid, if unsuccessful, will serve as the back-up bid.
- Trustee has sole discretion to determine the “best bid” for the Live Oak Property.

B. The minimum overbid and Buyer’s credit are reasonable should be allowed.

The minimum overbid is set at \$9,550,000, which is \$450,000 higher than the initial bid by Buyer – or approximately 4.9 % of the initial bid of \$9,100,000. In light of the circumstances of the case and the expensive due diligence that Buyer will be undertaking, this minimum overbid is reasonable and will ensure that any overbid will result in no less benefit to the Estate than Buyer’s initial bid. In short, the Buyer’s continued due diligence to ascertain the water levels at the Live Oak Property available to irrigate crops will provide a significant benefit to other bidders in that no overbidder will have to spend a comparable amount of time, energy, and money to obtain information regarding the water levels for irrigation. Thus, the bid protections described in the PSA and set forth above are necessary for Trustee to retain Buyer’s interest and to provide assurances to Buyer that it will not be losing all of the money that it is spending on due diligence if it does not ultimately win at the auction.

Trustee requests that the Court set a sale hearing no later than December 13, 2021 which will allow Buyer to conduct its due diligence through most of November before the sale motion must be filed.

Your Rights May Be Affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

Deadline for Opposition Papers. Any opposition and accompanying memorandum of points and authorities and declarations must be filed and served at least 1 day prior to the hearing,

1 unless otherwise ordered by the court. *See* LBR 6004-1(b)(2). Documents filed in opposition to the
2 motion must be served by personal delivery, messenger, fax, or email. A judge's copy of the
3 opposition must be served on the judge in chambers in accordance with LBR 5005-2(d).

4 **PLEASE TAKE FURTHER NOTICE** that any party requesting a copy of the Motion or
5 any supporting documents filed with the Court with respect to the Motion may contact counsel for
6 the Trustee, Kristine A. Thagard and Tinho Mang, by email at kthagard@marshackhays.com, and
7 tmang@marshackhays.com, by mail at 870 Roosevelt, Irvine, California 92620, or by telephone at
8 (949) 333-7777.

9
10 DATED: October 4, 2021

MARSHACK HAYS LLP

11
12 By: /s/ Kristine A. Thagard

13 KRISTINE A. THAGARD

14 TINHO MANG

15 Attorneys for Chapter 7 Trustee,

16 RICHARD A. MARSHACK
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
870 Roosevelt, Irvine, CA 92620

A true and correct copy of the foregoing document entitled: NOTICE OF **TRUSTEE'S MOTION FOR ORDER APPROVING OVERBID PROCEDURES FOR THE SALE OF PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **October 5, 2021**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**: On _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL**: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **October 5, 2021**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA PERSONAL DELIVERY **PRESIDING JUDGE'S COPY**

HONORABLE MARK S. WALLACE
UNITED STATES BANKRUPTCY COURT, CENTRAL DISTRICT OF CALIFORNIA
RONALD REAGAN FEDERAL BUILDING AND COURTHOUSE
411 WEST FOURTH STREET, SUITE 6135 / COURTROOM 6C
SANTA ANA, CA 92701-4593

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 5, 2021
Date

Layla Buchanan
Printed Name

/s/ Layla Buchanan
Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): CONTINUED:

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